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AIRFORCE FOR HQ USAF/ASX AND ASXP
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DIA FOR LEA

E.O. 12958: DECL: 09/21/2019

TAGS: [KACT](#) [MARR](#) [PARM](#) [PREL](#) [RS](#) [US](#) [START](#)

SUBJECT: START FOLLOW-ON NEGOTIATIONS, GENEVA (SFO-GVA-V):
(U) FOURTH MEETING OF THE INSPECTION PROTOCOL WORKING
GROUP, SEPTEMBER 28, 2009

REF: GENEVA 00831 (SFO-GVA-V-039)

Classified By: A/S Rose E. Gottemoeller, United States
START Negotiator. Reasons: 1.4(b) and (d).

[1](#)1. (U) This is SFO-GVA-V-025.

[1](#)2. (U) Meeting Date: September 28, 2009
Time: 3:00 p.m. to 5:55 p.m.
Place: Russian Mission, Geneva

SUMMARY

[1](#)3. (S) The fourth meeting of the Inspection Protocol Working Group (IPWG) focused on discussion of the U.S.- and Russian-proposed joint draft text (JDT) of Section II of the Inspection Protocol (IP) regarding inspector and air crew privileges and immunities. The Russian delegation presented its concept of "inspections" and "inspection-visits" as well as a three-level approach to documenting the treaty provisions and implementation specifics.

[1](#)4. (S) The U.S. side said it was encouraging to hear the Russian delegation express recognition of the need for specifying three levels of detail in describing and implementing the inspection process required for verification. The U.S. side said questions remain regarding the potential role of the Bilateral Consultative Commission (BCC) in developing the third level annex, the timing of the conclusion of the annex, and how the annex will fit with the

rest of the treaty package that will be subject to ratification.

LEGAL DEBATES

¶5. (S) At the fourth meeting of the IPWG, Col Ilin introduced the topic of inspector privileges and immunities and, as agreed in the previous meeting, invited the legal advisors from the two delegations to discuss the JDT of Section II of the IP addressing these issues. Ms. Kotkova outlined the areas of the text that she understood were in question--the grounds for objecting to the inclusion of an inspector on the START Inspector List, the inviolability of office premises, and the diplomatic immunities accorded to inspectors. Dr. Warner stated that he preferred to go through the text sequentially in addressing these issues and requested that Kotkova and Mr. Brown begin with paragraph 6 of the U.S.-proposed text for Sections I and II (Reftel). Warner explained that the U.S.-proposed text included the provision from START that a proposed inspector could only be objected to if he or she were "under indictment for a criminal offense" while the Russian text did not. He said that the Russian delegation had provided its text on September 27, 2009.

Begin text of official translation of the Russian-proposed text:

Official Translation

Working Group II
As of September 27

Inspections, Visits, and Exhibitions
(Joint Text)

II. Provisions Concerning the Legal Status of Inspectors,
Monitors, and Aircrew Members

¶1. Inspections, ((inspection visits and))2 exhibitions ((and continuous monitoring activities)) shall be conducted by inspectors ((and monitors))1. ((Except as provided for in paragraph 6 of Section IV of this Protocol,))1 inspectors ((and monitors))1 shall be transported to the territory of the inspected Party by inspection airplanes, commercial flights ((, and "Open Skies" aircraft))2.

¶2. The list of inspectors shall not contain at any one time more than ((200))2 ((400))1 individuals ((, and the list of monitors shall not contain at any one time more than 300 individuals))1. The number of individuals on the list of aircrew members shall be determined at the discretion of each Party based on the premise that the number of aircrew members for each inspection airplane shall not exceed ten. Inspectors ((and monitors))1 ((and aircrew members))2 shall be citizens of the inspecting Party.

¶3. Each Party shall have the right to amend its lists of inspectors ((, monitors))1, and aircrew members no more than once in each ((three-month))2 ((21 day))1 period ((, by providing the other Party with a notification in accordance with paragraph 20 of Section III of this Protocol))1. With each change, the number of inspectors whose names are entered in the list of inspectors shall not exceed 30 while the number of aircrew members whose names are entered in the list of aircrew members shall not exceed 25. The Party receiving notification of an amendment to the list of inspectors or aircrew members shall provide notification to the other Party, in accordance with ((paragraph 5 of Subsection VI of Section IV of this Annex))2, of its agreement with or objection to the designation of each such inspector or aircrew member.

14. The lists of inspectors and aircrew members shall contain, for each proposed inspector and aircrew member, the first name, middle name or patronymic, and last name; day, month, and year of birth; place of birth (city, oblast or state, and country); and passport number, if available.

15. No later than 25 days after the initial exchange of lists, or no later than 30 days after receipt of a notification of amendments to the lists of inspectors or aircrew members, the Party receiving such lists or proposed amendments thereto shall provide visas and, where necessary, such other documents to each individual to whose designation it has agreed, as may be required so that each inspector or aircrew member may enter and remain in the territory of that Party throughout the in country period. The inspected Party shall ensure that such visas and appropriate documents shall be issued for a period of at least 24 months, and the inspecting Party shall ensure that individuals receiving such

visas and appropriate documents shall use them only for the purpose of conducting inspections and visits in accordance with the provisions ((of Section V of this Annex))1.

16. ((An individual on the list of inspectors may be objected to only if that individual is under indictment for a criminal offense on the territory of the inspected Party or if that individual has been convicted in a criminal prosecution or expelled by the Party reviewing the list.))1 An individual on the list of inspectors ((, monitors))1 or aircrew members may be objected to in the future if that individual is found unacceptable by the Party reviewing the list. The Party making such an objection shall so notify the other Party in accordance with ((paragraph 5 of Subsection VI of Section IV))2 ((paragraph 21 of Section III of this Protocol))1. Individuals who are objected to shall be deleted from the lists.

18. ((sic - paragraph number 7 is missing - Trans.)) An inspection team shall include no more than ((9))2 ((10))1 inspectors.

19. A team participating in ((an inspection visit,))2 shall include no more than ((7))2 ((10))1 inspectors.

110. A team participating in an exhibition shall include no more than ten inspectors.

(())1 - U.S. proposed
(())2 - Russian proposed

End text.

16. (S) Kotkova asserted that each Party should decide for itself which persons it would allow entry and exit rights to its territory and that the legislative framework of both countries did not require any explicit grounds for rejection to be provided. Further, she noted that she had consulted with colleagues familiar with START implementation and found that cases of either side objecting to proposed inspectors had not occurred frequently, but when it did, it was not because of this paragraph.

17. (S) Brown explained that the U.S. position was based on precedent from START, the Intermediate Nuclear Forces (INF) Treaty, Threshold Test Ban, and the Peaceful Nuclear Explosions Treaties. This provision was included in each of these treaties, and they were negotiated and signed during a time when the privileges and immunities accorded to inspectors were unusual for the Soviet Union to grant to any foreigner, especially an American. It was a show of trust, and omitting it now would be a step back to a time of much less trust between the sides. Kotkova disagreed, believing that the change highlighted the fact that the Parties trust each other so much that they do not need to list grounds for rejecting a proposed individual since they can have confidence that the right of rejection without justification will not be abused. Ilin concluded that the two Parties were

not able to agree, but noted that it was significant that, even though there had been objections, there had not been a single case of rejection based on the criminal offense provision. He also noted that times had changed and that, since the Russian Federation is a state based on rule of law,

the specific grounds for objection would be governed by Russian legislation. Brown asked, as a matter of legal clarification, if the provision were to be included in the treaty, would it not change Russian law with respect to the matter. Kotkova responded that if Russia signed the treaty, it entered into force, and it did provide for specific grounds, the provisions of the international agreement would apply.

VIENNA CONVENTION LIVES BUT WE'RE IN GENEVA

¶18. (S) Brown presented the U.S. rationale for retaining the provisions that describe the specific privileges and immunities accorded to inspection teams and air crews, in paragraph 10 and its eight subparagraphs in the U.S.-proposed JDT. The conditions specified in the U.S. version of the chapeau including the key phrases "for purpose of implementing the Treaty" and "not for their personal benefit" have precedent not only in the START and INF treaties but also in the multilateral Chemical Weapons Convention (CWC). Kotkova replied that they were not included in the Russian version because they were considered to be self-evident. Ilin further stated that the language was excessive--these conditions and privileges were implied in the definition of an inspector. (Begin comment: The U.S. delegation subsequently discovered that the Russian-proposed draft treaty text includes this specific provision at paragraph 6 of Article XI and called this to the attention of the Russian side at our next working group meeting. End comment.)

¶19. (S) A discussion then ensued around the question of the time period during which these immunities were to apply. It was discovered that wording in the chapeau at the end of paragraph 10 of the U.S.-proposed draft corresponded closely to wording at the end of paragraph 6 of the Russian version--both saying that the rights of status apply when the inspection team is within the territory of the other Party. Warner stated that he would show the phrase at the end of Paragraph 6 as agreed language.

¶10. (S) Warner then noted that references to monitors and monitoring activities in several of the subparagraphs would remain conditional for now, dependent upon the ultimate resolution of the continuous monitoring of mobile ICBM production issue, and turned the discussion to subparagraphs (d) and (e). The second part of subparagraph (d) specifies that the inviolability accorded to inspection airplanes for transport of inspection teams does not apply to commercial flights. Brown provided the historical background about why this had been a concern during START negotiations and was deemed useful.

¶11. (S) Brown presented the "immunity from jurisdiction" provision in the second half of subparagraph (e) as one that had strong precedent in INF, CWC, and the other nuclear arms control treaties. It would allow the inspecting Party to waive immunity if an inspector violated the law and it must be expressed in writing. Kotkova pointed out that whether or not the provision is in the treaty, a Party may reject immunity from jurisdiction by rule of customary international law. The Vienna Convention on Diplomatic Relations is

recognized by both the United States and Russia and codifies the existing rule of international law in this area, and that it made no difference whether it was in the new treaty or not. Neither Russia nor the United States would dispute the fact that States have the right to do this. Kotkova clarified that customary practice is that the waiver must be express,

so there was no need to include that in the treaty. Warner stated that he did not disagree with the points made but pointed out that we had agreed in the past to make these terms explicit. Kotkova agreed that the Russian side did not have a proposal for covering the immunities explicitly and would follow what was in the U.S.-proposed text, but just did not believe it needed to be in the new treaty. It was agreed that the language would remain bracketed.

WHERE DID THE AIRCREW GO?

¶12. (S) The discussion then turned to subparagraph (h) which deals with consultations if there has been an abuse of privileges--the U.S.-proposed JDT includes these provisions while the Russian version does not. Brown pointed to the precedents for this under START, INF, and CWC, stating that it would provide for useful consultations to ensure there was no recurrence of an abuse. Kotkova stated that it was deleted from the Russian-proposed text because the provision had not been used under START but in the framework of the treaty, it could be useful. Ilin agreed to include the provision as agreed text.

¶13. (S) Ilin proposed shortening and combining subparagraphs (e) (according diplomatic immunities) and (g) (bringing personal items with no customs required) and separating out the second part of (e) (immunity from jurisdiction) into a new subparagraph. Warner said the U.S. team would look at a combination of subparagraphs (e) and (a) (diplomatic inviolability). There was then some discussion of the ending chapeau of paragraph 10 which includes the concepts of according privileges and immunities for the entire time on territory as well as non-interference in internal affairs. It was agreed that the provisions apply to inspectors and aircrew. Ilin agreed that the Russian delegation would work on the chapeau and Warner agreed that the U.S. delegation would look at combining sub-paragraphs (a) and (e).

¶14. (S) Warner discussed the potential use of Open Skies aircraft as proposed in Subsection III of Section V of the Russian-proposed Annex and as mentioned in discussion of transporting inspectors. In principle, the U.S. has no issue with using the Open Skies aircraft for transporting inspection teams to the inspected country. Warner did, however, note a potentially serious timing/synchronization problem. Departures of START and presumably START Follow-on (SFO) inspection teams from the territory of the inspected Party are mandated to be no later than 24 hours after the inspection team returns to the POE. The Open Skies Treaty has a similar provision regarding Open Skies personnel. A sequential SFO inspection/visit or delay in aircraft departure could delay the departure of the inspecting Party and thus not allow them to synch up with the departure of the Open Skies aircraft and thus comply with the maximum 24 hour stay limit at the POE on the way out. Ilin said they were

aware of the timing issues, but still wanted to move forward with the use of an Open Skies aircraft option.

AN INSPECTION BY ANY OTHER NAME

¶15. (S) Ilin presented a handout in both Russian and unofficial English translation, defining the terms "inspection" and "inspection-visit." After hearing the presentation, Warner asked about the absence of discussion of the term "exhibition" as a third form of inspection activity. The U.S. delegation had understood confirmation of technical characteristics to be an exhibition activity rather than the subject of an inspection visit. Ilin stated that exhibitions would apply to new items. After items had been demonstrated in an exhibition, the inspecting Party would have the right to verify or confirm where new items were deployed. An "inspection-visit" would be used to confirm while an

exhibition would demonstrate. This is part of the Russian concept of a three-level approach.

Begin text of official translation of Russian Paper:

To Be Turned Over to the
U.S. Side
Paper of the Russian Side
September 28, 2009

Working Group II
Russian-Proposed Wording for

Terms

Inspection - activities of the Parties to the Treaty, carried out in accordance with Article XI of the Treaty, aimed at verifying that they have fulfilled the obligations concerning reduction and limitation of deployed ICBMs, deployed SLBMs, and deployed HBs, deployed launchers of ICBMs, deployed launchers of SLBMs, as well as warheads on deployed ICBMs, deployed SLBMs, and deployed HBs.

Inspections shall be conducted in accordance with the procedures recorded in ((Section V of the Annex to the Treaty))1((the Protocol on Inspections...))2.

Inspection visit - activities of the Parties to the Treaty, carried out in accordance with Article XI of the Treaty aimed at confirming:

- data on the number of non-deployed ICBMs, non-deployed SLBMs, non-deployed HBs, non-deployed launchers of ICBMs, and non-deployed launchers of SLBMs;

- data on technical characteristics of strategic offensive arms, provided during an exchange of information or demonstrated during exhibitions of new items of SOAs, or in the course of confirming that items of SOAs have been converted for new kinds of SOAs;

- that items of SOAs or SOA facilities have been eliminated.

Inspection visits shall be conducted in accordance with

the procedures agreed by the Parties in the Bilateral Consultative Commission (BCC) and recorded in BCC Agreements.

(())1 Proposed by the United States
(())2 Proposed by the Russian Federation

End text.

¶16. (S) Warner stated that he did not disagree with the idea of an inspection as applying to confirming numbers of deployed items. He preferred to describe the inspections with an additional adjective but recognized it as a matter of taste. He stated that the U.S. translation would be "inspection-visit" and agreed that it would focus on confirming data on non-deployed items. But there was continuing confusion over how technical characteristics would be handled. How to handle new types was clear in the proposal but he was not aware of the continuing need to check technical characteristics on existing systems. Additionally, confirming an elimination seemed to fit into the category of an inspection-visit.

DETAILS MATTER BUT WHERE ARE THE TIES THAT BIND?

¶17. (S) Ilin stated that it was important to stipulate the procedures to be set forth in the Annex or Protocol of the treaty and the required detail to implement the treaty provisions. He attempted to explain the philosophy of a three-level approach that included the treaty articles as the first level, the Annex or Protocol as the second level, and

BCC agreements as the third level.

¶18. (S) Warner agreed with the description of treaty level and protocol or annex level (perhaps termed a "Single Collection of Protocols"). His vision of the third level, however, was of a fairly detailed set of provisions to be used by the BCC but developed by these delegations during this negotiation. The yellow highlighting in the draft JDT would become wording at this level. This third level would be of great value, especially to inspectors and escorts, and would frequently be used as a primary reference during inspections to guide procedures. The U.S. prefers to negotiate these detailed procedures during this negotiation rather than delaying their development for the formation of the BCC. This is possible because of the previously agreed procedures and work of the Joint Compliance and Inspection Commission. The United States believes that these detailed procedures constitute an important document for use by the BCC but not one that we could wait for the BCC to build.

¶19. (S) Ilin was happy with the agreement on levels and said he was ready to discuss all details, but with the difference that these provisions would not be a part of the treaty for ratification--these detailed provisions would be left to the BCC. The important provisions would be specified and stipulated in the Protocols--the third level would enter into force after the treaty and not be ratified. Warner stated that, under this approach, some of the issues in the annexes may have to move up to the protocol level because they are relevant to ratification. For example, key aspects of the warhead inspection may need to be specified. In START,

inspections were described in the treaty, the protocol provided more description and how to get to the POE and base, and the annex told how to conduct the actual inspection. For the U.S. ratification process, we can't say "the details will come later."

¶20. (S) Ilin concluded the meeting by stating that the main point was that both sides would have to better understand what has to go into the BCC documentation before treaty signature. The BCC would not start from a blank sheet but from the basis of the past agreements. He provided a copy of a proposed JDT on Inspections, Visits, and Exhibitions in Russian.

¶21. Documents exchanged:

Russia:

- Russian-Proposed Language of Terms--Inspections and Inspections Visits, dated September 28, 2009; and

- Russian-Proposed Joint Draft Text for Inspection, Visits, and Exhibitions (Joint Text), in Russian, dated September 27, 2009.

¶22. (S) Participants:

U.S.

Dr. Warner
Ms. Bosco
Mr. Brown
Mr. Buttrick
Mr. DeNinno
Mr. Fortier
Maj Johnson
Ms. Pura
Mr. Rust
Mr. Sims
Mr. Smith
Ms. Gesse (Int)

RUSSIA

Col Ilin

Amb Antonov
Mr. Izrazov
Mr. Kostuchenko
Ms. Kotkova
Col Novikov
Gen Orlov
Mr. Vorontsov
Mr. Shevchenko
Ms. Komshilova (Int)

¶23. (U) Gottemoeller sends.
RICHTER